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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/715,036 | 11/17/2003 | Jeffrey T. Roney | 380-040 CONT | 2777 |
| 1009 | 7590 | 01/26/2005 | EXAMINER | |
| KING & SCHICKLI, PLLC 247 NORTH BROADWAY LEXINGTON, KY 40507 | | | SPISICH, MARK | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 1744 | |
| DATE MAILED: 01/26/2005 | | | | |

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|--------------------------------------|-------------------------------------|--|
| Office Action Summary | Application No. 10/715,036 | Applicant(s) RONEY ET AL. | |
| | Examiner Mark Spisich | Art Unit 1744 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 November 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>4/2004</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Drawings

1. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: #10 (as per page 5, line 10). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Double Patenting

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

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3. Claims 1-13 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-14 of copending Application No. 10/433,851. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of this and the noted co-pending application essentially anticipated each of other with any differences between the claims being obvious to one of ordinary skill..

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claim 11 is rejected under 35 U.S.C. 102(b) as being anticipated by Taylor (USP 2,372,404). The patent to Taylor discloses an agitator comprising an axle (11), pulley (12) as well as a sleeve (10) received over the axle. As claim 11 is currently defined, the left side (for example) of the pulley (12) which receives the stub shaft (42) reads on the recited "mounting fixture".

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and

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the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nordeen (USP 3,737,937) in view of Maier (USP 4,173,807). The patent to Nordeen discloses an agitator (10) comprising a continuous metal (column 4, line 41-42) axle (20), a pulley (37) held on one end of the axle as well as a plastic (column 4, lines 36-37) cylindrical sleeve (19) received over the metal axle. The patent to Nordeen discloses the invention substantially as claimed with the exception of the diameter of the sleeve. The patent to Maier discloses an agitator sleeve (1) which has a diameter of less than 20 mm (see column 2, lines 10-11). It would have been obvious to one of ordinary skill to have modified the device of Nordeen as such to reduce the tendency of hairs to loop around the sleeve. The patent to Nordeen further discloses the cleaning brush (16) (claims 2-3). As for claim 4, one of ordinary skill would deem it obvious to modify the axle diameter to suit or match the machine in which it is intended to be mounted. The pulley (37) of Nordeen further includes a hub (38) for mounting to the axle (claim 5).

8. Claims 1-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nakada et al (USP 4,446,595) in view of Maier (USP 4,173,807). The patent to Nakada discloses an agitator (best shown in figure 4) comprising an axle (13), sleeve (12) and a pulley (17). The patent to Nakada discloses the invention substantially as claimed with the exception of (1) the materials of the axle and sleeve and (2) the sleeve diameter. It would have been obvious to one of ordinary skill to have used the recited axle and sleeve materials (metal and plastic), since it has been held to be within the general skill

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of a worker in the art to select a known material on the basis of its suitability for the intended use. *In re Leshin*, 125 USPQ 416. As for the sleeve diameter, the patent to Maier discloses a sleeve (1) having the recited diameter (column 2, lines 10-11) and it would be obvious to one of ordinary skill to have modified the device of Nakada as such for the reason(s) set forth above. The sleeve of Nakada includes a brush (claims 2-3). The axle diameter (claim 4) would be obvious to one of ordinary skill for the same reason set forth above and the pulley (17) of Nakada includes a hub (see right portion of figure 4) for mounting to the axle.

Allowable Subject Matter

9. Claims 6-10, 12 and 13 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

10. The following is a statement of reasons for the indication of allowable subject matter: The prior art failed to teach, in particular in the recited combination, (1) the pulley including the recited D-nut (#18 in the drawings) for engaging a stub shaft of a drive gear and (2) pulley and sleeve including the pairs of cooperating ribs and flanges.

Conclusion

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Each of the cited patents, with the exception of Hoff (which discloses overmolding a sleeve over an axle) are pertinent to agitators having a pulley secured or attached to an end thereof.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark Spisich whose telephone number is (571) 272-1278. The examiner can normally be reached on M-Th (5:30-3:00), Alternate Fri off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert J Warden can be reached on (571) 272-1281. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Mark Spisich
Primary Examiner
Art Unit 1744

MS